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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/795,843	03/08/2004	Dilip K. Nakhasi	0803-0111	1274
26568 7590 12/03/2008				
COOK ALEX LTD SUITE 2850 200 WEST ADAMS STREET CHICAGO, IL 60606				
EXAMINER				
PADEN, CAROLYN A				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
12/03/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/795,843

**Applicant(s)**

NAKHASI ET AL.

**Examiner**

Carolyn A. Paden

**Art Unit**

1794

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 September 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9, 11-13, 15-25, 35-37, 40, 41 and 43-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-13, 15-25, 35-37, 40, 41 and 43-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsman's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 11-13, 15-25, 27, 29, 35-37, 40, 41, 43-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Babayan et al (3,006,771) as further evidenced by Heydinger (Medium Chain Triacylglycerols) in view of Wester (6,589,588) and CFR taken together.

Babayan discloses a fat composition for margarine vegetable oil that is made by the trans-esterification of medium chain fatty acids with coconut oil (example 1). The extent of medium chain fatty acids is over 35%. It is appreciated that the viscosity and smoke point of the lipid are not disclosed but viscosity and smoke point are inherent features of triglycerides. Further Heydinger is cited for evidence of viscosity, smoke point for Neobee in the Table 2 on page 256. Neobee 1814 is identified by the Heydinger in the first paragraph of page 256 as being the interesterified product of butter oil and medium chain fatty acids. Butter oil and hydrogenated coconut oil would both be expected to contain alot of saturated fatty acids. The interesterified product of medium chain fatty acids and hydrogenated

coconut oil would be expected to have similar viscosity and smoke point to Neobee. The claims appear to differ from Babayan in the inclusion of phytosterol esters. Wester is relied upon to show that incorporation of phytosterols esters into foods acts to lower the cholesterol of the body (column 1, lines 13-37). The concept of including phytosterols in cooking oils is specifically outlined in Wester at column 5, lines 35-37. CFR is relied upon to show the levels of phytosterol ester fortification required to make labeling claims with regard to lowering cholesterol and reducing risk of coronary heart disease at page 147, (G)(1) & (2). It would have been obvious at the time of applicants' invention to prepare the oil of Babayan with the phytosterols of Wester in order to provide a healthy oil product that one may claim on the food package as reducing the risk of coronary heart disease.

Applicant argues that Babayan does not include vegetable oil sources. This is disagreed with as not above. Applicant points to the clinical study of St Onge. This has been considered but does not overcome the CFR requirement for fortification levels of plant sterols in foods. If one of ordinary skill in the art wanted to advertise that his margarine reduces cholesterol adsorption, it would have been obvious to

follow the fortification requirement set forth by the FDA in order to make this claim.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone

number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached by dialing 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Carolyn Paden/

Primary Examiner 1794

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